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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. JOE RAMOS VASQUEZ, Defendant and Appellant.	H037835 (Santa Clara County Super. Ct. No. C1068496)

Defendant Joe Ramos Vasquez, who is required to register as a sex offender because of a prior conviction, was convicted by plea of failing to notify police of his new address in violation of Penal Code section 290.013, subdivision (a), with an admitted strike prior and two prison priors.[1] (§§ 667.5, subd. (b) & 1170.12.) After the court denied his *Romero* motion,[2] he was sentenced to 32 months in prison. The court, without objection, awarded a total of 615 days of pre-sentence credit, of which 204 days were conduct credit calculated under former code section 4019, subdivision (f).

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[1] Further unspecified statutory references are to the Penal Code.

[2] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

In a prior appeal from the judgment,[3] Vasquez challenged the booking fee the trial court had imposed. But in supplemental briefing, he also contended on equal protection grounds that he was entitled to additional conduct credit based on legislative changes to section 4019, expressly operative to crimes committed on or after October 1, 2011. In the prior appeal, respondent argued that this issue was forfeited because Vasquez had failed to raise the issue below. In our prior opinion, we nevertheless reached the merits and rejected the claim. In the meantime, Vasquez filed a motion in the superior court for additional conduct credits based on the same equal protection arguments. The trial court denied the motion and Vasquez now appeals that ruling. Concluding that we have already decided this issue by rejecting the same claim and that our prior opinion establishes the law of the case on the question, we affirm the post-judgment order.

STATEMENT OF THE CASE

I. *Factual Background*

As we noted in our prior opinion, "Vasquez was required to register as a sex offender under section 290 because of a conviction in 2000 for lewd conduct on a child under 14 in violation of section 288, subdivision (a). After his later 2005 conviction for failing to register as a sex offender in violation of section 290.013, subdivision (a), he was discharged from parole in January 2009. On June 3, 2009, he registered his address as 3310 Invicta Way.

"On December 17, 2009, a San Jose police officer visited Vasquez's registered address and spoke to the property owner, who lived there. She indicated that defendant had lived in a rented room at the address but that he had failed to pay rent for several months and had not been seen at the residence since December 1, 2009. Some of his belongings remained but the property owner said that she thought Vasquez had moved.

[3] By separate order, we have taken judicial notice of the record in *People v. Vasquez*, H037144. On our own motion, we now also take judicial notice of our unpublished opinion filed in that case on April 12, 2012.

He had told her he would be visiting a sister who lived out of state at Thanksgiving and that he hoped to then move to Texas.

"On May 16, 2010, Vasquez was arrested at a motel on First Street on a warrant for non-compliance with his obligation to register his new address with police. He denied that he had moved out of the residence at Invicta Way and said that he had merely gone to visit his sister.

II. *Procedural Background*

Further as noted in our prior opinion, "[a]fter being bound over for trial, Vasquez was charged by information with failing to notify police of his new address in violation of section 290.013, subdivision (a). The information included allegations that he had a prior serious felony conviction and two prior prison terms. (§§ 667.5, subd. (b); 667, subds. (b)-(i) & 1170.12.) In a negotiated plea bargain, Vasquez pleaded no contest and admitted the enhancement allegations.

"On June 30, 2011, the court denied defendant's *Romero* motion and sentenced him to 32 months in prison, consistently with the plea bargain. . . . The court awarded 615 days of pre-sentence credits, of which 411 were actual days and the remaining 204 were conduct credits under former section 4019. (Stats. 1982, ch. 1234, § 7.) The court later amended the abstract of judgment on August 17, 2011, to correct a clerical error. (Footnote omitted.)

Vasquez appealed from the judgment of conviction, contending on equal protection grounds that he was entitled to additional conduct credits based on legislative changes to section 4019, operative October 1, 2011. Respondent contended that this issue was forfeited on appeal because Vasquez did not raise it below. We nevertheless reached the merits of the issue, rejecting Vasquez's claim to additional conduct credits and affirming the judgment. (*People v. Vasquez*, H037144, [non-pub opn.] filed April 12, 2012.) But because respondent had urged forfeiture of the issue, Vasquez in the

meantime filed a motion in the superior court in which he requested, on equal protection principles, additional conduct credits based on the same legislative changes to section 4019. Respondent opposed the motion and the trial court denied it. Vasquez now appeals from that post-judgment order.

DISCUSSION

Vasquez's single claim in this appeal is that he is entitled, based on equal protection principles, to additional conduct credits under section 4019 because of amendments to that section, operative October 1, 2011. This is the identical claim he raised in the prior appeal, and we rejected it on the merits and as a matter of law. This determination constitutes the law of the case, which compels us to again reject Vasquez's claim.

"Under the law of the case doctrine, when an appellate court ' "states in its opinion a principle or rule of law necessary to the decision, that principle or rule of law becomes the law of the case and must be adhered to throughout [the case's] subsequent progress, both in the lower court and upon subsequent appeal. . . ." ' [Citation.] Absent an applicable exception, the doctrine 'requir[es] both trial and appellate courts to follow the rules laid down upon a former appeal whether such rules are right or wrong.' [Citation.] As its name suggests, the doctrine applies only to an appellate court's decision on a question of law; it does not apply to questions of fact. [Citation.]' " (*People v. Barragan* (2004) 32 Cal.4th 236, 246.)

Based on the law-of-the-case doctrine, we accordingly reject Vasquez's reprised legal claim to additional conduct credits. Parenthetically we add that we would reject the claim on the merits, as we did in our prior opinion, even if it were not the subject of the law of the case. Since our prior opinion was filed on April 12, 2012, the only significant change in the legal landscape on the issue of the right to additional conduct credits under section 4019, as operative October 1, 2011, based on equal protection principles is that

we published *People v. Olague* [H036888], 2012 Cal.App. Lexis 537 (May 7, 2012) and our colleagues in Division One of the First Appellate District published *People v. Borg* (2012) 204 Cal.App.4th 1528. In *People v. Olague*, we rejected the defendant's parallel claim that he was entitled, based on equal protection principles, to additional conduct credit, concluding that the statutory amendments affecting classes of inmates differently were supported by two independent rational bases. The court of appeal in *People v. Borg* likewise rejected a similar claim and determined that although the amendments do treat similarly situated classes of persons disparately, the legislation nevertheless bears a rational relationship to a legitimate state purpose. (*People v. Borg, supra*, 204 Cal.App.4th at pp. 1538-1540.) We agree with this latter point in particular.

DISPOSITION

The post-judgment order denying additional conduct credits is affirmed.

Duffy, J.*

WE CONCUR:

Rushing, P.J.

Premo, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.